



# House of Representatives

## File No. 806

General Assembly

January Session, 2003

**(Reprint of File No. 513)**

Substitute House Bill No. 6417  
As Amended by House Amendment  
Schedules "A" and "B"

Approved by the Legislative Commissioner  
May 31, 2003

### **AN ACT CONCERNING STATE CONSTRUCTION CONTRACTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4b-91 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 (a) Every contract for the construction, reconstruction, alteration,  
4 remodeling, repair or demolition of any public building for work by  
5 the state, which is estimated to cost more than five hundred thousand  
6 dollars, except (1) a contract awarded by the Commissioner of Public  
7 Works for (A) a community court project, as defined in subsection (j) of  
8 section 4b-55, (B) the Connecticut Juvenile Training School project, as  
9 defined in subsection (k) of section 4b-55, (C) the downtown Hartford  
10 higher education center project, as defined in subsection (l) of section  
11 4b-55, (D) The University of Connecticut library project, as defined in  
12 subsection (d) of section 4b-55, (E) a correctional facility project, as  
13 defined in subsection (m) of section 4b-55, (F) a juvenile detention  
14 center project, as defined in subsection (n) of section 4b-55, or (G) a  
15 student residential facility for the Connecticut State University system

16 that is a priority higher education facility project, as defined in  
17 subsection (f) of section 4b-55, or (2) a project, as defined in  
18 subdivision (16) of section 10a-109c, undertaken and controlled by The  
19 University of Connecticut in accordance with section 10a-109n, shall be  
20 awarded to the lowest responsible and qualified general bidder who is  
21 prequalified pursuant to section 3 of this act on the basis of  
22 competitive bids in accordance with the procedures set forth in this  
23 chapter and section 9 of this act, after the Commissioner of Public  
24 Works or, in the case of a contract for the construction of or work on a  
25 building under the supervision and control of the Joint Committee on  
26 Legislative Management of the General Assembly, the joint committee  
27 or, in the case of a contract for the construction of or work on a  
28 building under the supervision and control of one of the constituent  
29 units of the state system of higher education, the constituent unit, has  
30 invited such bids by advertisements inserted at least once in one or  
31 more newspapers having a circulation in each county in the state. The  
32 Commissioner of Public Works, the joint committee or the constituent  
33 unit, as the case may be, shall indicate the prequalification  
34 classification and aggregate work capacity rating required for the  
35 contract in such advertisement. As used in this section,  
36 "prequalification classification" means the prequalification  
37 classifications established by the Commissioner of Administrative  
38 Services pursuant to section 3 of this act and "aggregate work capacity  
39 rating" means the aggregate work capacity ratings established by the  
40 Commissioner of Administrative Services pursuant to section 3 of this  
41 act.

42 (b) The Commissioner of Public Works, the joint committee or the  
43 constituent unit, as the case may be, shall determine the manner of  
44 submission and the conditions and requirements of such bids, and the  
45 time within which the bids shall be submitted, consistent with the  
46 provisions of sections 4b-91 to 4b-96, inclusive. Such award shall be  
47 made within sixty days after the opening of such bids. If the general  
48 bidder selected as the general contractor fails to perform the general  
49 contractor's agreement to execute a contract in accordance with the

50 terms of the general contractor's general bid and furnish a performance  
51 bond and also a labor and materials or payment bond to the amount  
52 specified in the general bid form, an award shall be made to the next  
53 lowest responsible and qualified general bidder. [If] No employee of  
54 the Department of Public Works, the joint committee or a constituent  
55 unit with decision-making authority concerning the award of a  
56 contract may communicate with any bidder prior to the award of the  
57 contract if the communication results in the bidder receiving  
58 information about the contract that is not available to other bidders,  
59 except that if the lowest responsible and qualified bidder's price  
60 submitted is in excess of funds available to make an award, the  
61 Commissioner of Public Works, the Joint Committee on Legislative  
62 Management or the constituent unit, as the case may be, [is  
63 empowered to] may negotiate with such bidder and award the  
64 contract on the basis of the funds available, without change in the  
65 contract specifications, plans and other requirements. If the award of a  
66 contract on said basis is refused by such bidder, the Commissioner of  
67 Public Works, the Joint Committee on Legislative Management or the  
68 constituent unit, as the case may be, may negotiate with other  
69 contractors who submitted bids in ascending order of bid prices  
70 without change in the contract, specifications, plans and other  
71 requirements. In the event of negotiation with general bidders as  
72 provided [herein] in this section, the general bidder involved may  
73 negotiate with subcontractors on the same basis, provided such  
74 general bidder shall negotiate only with subcontractors named on such  
75 general bidder's general bid form.

76 (c) On and after October 1, 2004, no person may bid on a contract,  
77 except for a project described in subdivision (2) of subsection (a) of this  
78 section, for the construction, reconstruction, alteration, remodeling,  
79 repair or demolition of any public building for work by the state or a  
80 municipality, which is estimated to cost more than five hundred  
81 thousand dollars and is paid for, in whole or in part, with state funds,  
82 unless the person is prequalified in accordance with section 3 of this  
83 act.

84       (d) On and after October 1, 2004, each bid submitted for a contract  
85 described in subsection (c) of this section shall include a copy of a  
86 prequalification statement issued by the Commissioner of  
87 Administrative Services showing that the bidder has the  
88 prequalification classification and aggregate work capacity ratings  
89 required under such contract. The bid shall also be accompanied by an  
90 update statement in such form as the Commissioner of Administrative  
91 Services prescribes. The form for such update statement shall provide  
92 space for information regarding all projects completed by the bidder  
93 since the date the bidder's prequalification certificate was issued or  
94 renewed, all projects the bidder currently has under contract,  
95 including the percentage of work on such projects not completed, the  
96 names and qualifications of the personnel who will have supervisory  
97 responsibility for the performance of the contract, any significant  
98 changes in the bidder's financial position or business organization  
99 since the date the certificate was issued or renewed, and such other  
100 relevant information as the Commissioner of Administrative Services  
101 prescribes. Any bid submitted without a copy of the prequalification  
102 certificate and an update statement shall be invalid.

103       (e) Any person who bids on a contract described in subsection (c) of  
104 this section shall certify under penalty of false statement at the  
105 conclusion of the bidding process that the information in the bid is  
106 true, that there has been no substantial change in the bidder's financial  
107 position or corporate structure since the bidder's most recent  
108 prequalification certificate was issued or renewed, other than those  
109 changes noted in the update statement, and that the bid was made  
110 without fraud or collusion with any person.

111       (f) Any person who receives information from a public official that  
112 is not available to the general public concerning any construction,  
113 reconstruction, alteration, remodeling, repair or demolition project on  
114 a public building prior to the date that an advertisement for bids on  
115 the project is published shall be disqualified from bidding on the  
116 project.

117        ~~[(b)]~~ (g) Notwithstanding the provisions of this chapter regarding  
118 competitive bidding procedures, the commissioner may select and  
119 interview at least three responsible and qualified general contractors [,  
120 and] who are prequalified pursuant to section 3 of this act and selected  
121 by the award panel established in section 9 of this act. The  
122 commissioner may negotiate with any one of such contractors a  
123 contract which is both fair and reasonable to the state for a community  
124 court project, as defined in subsection (j) of section 4b-55, the  
125 downtown Hartford higher education center project, as defined in  
126 subsection (l) of section 4b-55, The University of Connecticut library  
127 project, as defined in subsection (d) of section 4b-55, the Connecticut  
128 Juvenile Training School project, as defined in subsection (k) of section  
129 4b-55, a correctional facility project, as defined in subsection (m) of  
130 section 4b-55, a juvenile detention center project, as defined in  
131 subsection (n) of section 4b-55, or a student residential facility for the  
132 Connecticut State University system that is a priority higher education  
133 facility project, as defined in subsection (f) of section 4b-55. Any  
134 general contractor awarded a contract pursuant to this subsection shall  
135 be subject to the same requirements concerning the furnishing of  
136 bonds as a contractor awarded a contract pursuant to subsection [(a)]  
137 (b) of this section. On and after October 1, 2004, any agency that seeks  
138 to have a project awarded without being subject to competitive  
139 bidding procedures shall certify to the joint committee of the General  
140 Assembly having cognizance of matters relating to legislative  
141 management that the project is of such an emergency nature that an  
142 exception to competitive bidding procedures is required. Such  
143 certification shall include input from all affected agencies, detail the  
144 need for the exception and include any relevant documentation.

145        Sec. 2. Section 4b-92 of the general statutes is repealed and the  
146 following is substituted in lieu thereof (*Effective October 1, 2004*):

147        As used in this chapter and except as otherwise provided, the words  
148 "lowest responsible and qualified bidder" shall mean the bidder who is  
149 prequalified pursuant to section 3 of this act, and whose bid is the

150 lowest of those bidders possessing the skill, ability and integrity  
151 necessary to faithful performance of the work based on objective  
152 criteria considering past performance and [financial responsibility]  
153 information contained in the update statement submitted pursuant to  
154 section 4b-91, as amended by this act. Essential information in regard  
155 to such qualifications shall be submitted with the bid in such form as  
156 the awarding authority may require by specification in the bid  
157 documents and on the bid form. Every general bid shall be  
158 accompanied by a bid bond or a certified check in an amount which  
159 shall be ten per cent of the bid, provided no such bid bond or certified  
160 check shall be required in relation to any general bid in which the total  
161 estimated cost of labor and materials under the contract with respect to  
162 which such general bid is submitted is less than fifty thousand dollars.  
163 Failure to execute a contract awarded as specified and bid shall result  
164 in the forfeiture of such bid bond or certified check. In considering past  
165 performance the awarding authority shall evaluate the skill, ability and  
166 integrity of bidders in terms of the bidders' fulfillment of contract  
167 obligations and of the bidders' experience or lack of experience with  
168 projects of the [size] nature and scope of the project for which the bids  
169 are submitted.

170 Sec. 3. (NEW) (*Effective July 1, 2004*) (a) As used in this section: (1)  
171 "Prequalification" means prequalification issued by the Commissioner  
172 of Administrative Services to bid on a contract for the construction,  
173 reconstruction, alteration, remodeling, repair or demolition of any  
174 public building for work by the state or a municipality; (2)  
175 "subcontractor" means any person who performs any of the four  
176 classes of work specified in subsection (a) of section 4b-93 of the  
177 general statutes with a value in excess of twenty-five thousand dollars;  
178 and (3) "principals and key personnel" includes officers, directors,  
179 shareholders, members, partners and managerial employees.

180 (b) (1) Any person may apply for prequalification to the Department  
181 of Administrative Services. Such application shall be made on such  
182 form as the Commissioner of Administrative Services prescribes and  
183 shall be accompanied by a nonrefundable application fee as set forth in

184 subdivision (2) of this subsection. The application shall be signed  
185 under penalty of false statement.

186 (2) The application fee shall be as follows:

T1	Aggregate Work Capacity Rating	Fee
T2	\$5,000,000.00 or less	\$600.00
T3	\$5,000,000.01 - \$8,000,000.00	\$750.00
T4	\$8,000,000.01 - \$10,000,000.00	\$850.00
T5	\$10,000,000.01 - \$15,000,000.00	\$1,000.00
T6	\$15,000,000.01 - \$20,000,000.00	\$1,500.00
T7	\$20,000,000.01 - \$40,000,000.00	\$2,000.00
T8	\$40,000,000.01 or more	\$2,500.00

187 (c) The application form shall, at a minimum, require the applicant  
188 to supply information concerning:

189 (1) The applicant's form of organization;

190 (2) The applicant's principals and key personnel and any names  
191 under which the applicant, principals or key personnel conducted  
192 business during the past five years;

193 (3) The applicant's experience on public and private construction  
194 projects over the past five years, or on the applicant's ten most  
195 recently-completed projects and the names of any subcontractors used  
196 on the projects;

197 (4) Any legal or administrative proceedings pending or concluded  
198 adversely against the applicant or any of the applicant's principals or  
199 key personnel within the past five years which relate to the  
200 procurement or performance of any public or private construction  
201 contract and whether the applicant is aware of any investigation  
202 pending against the applicant or any principal or key personnel;

203 (5) The nature of any financial, personal or familial relationship  
204 between the applicant and any public or private construction project

205 owner listed on the application as constituting construction experience;

206 (6) A statement of whether (A) the applicant has been disqualified  
207 pursuant to section 4b-95 of the general statutes, this section or section  
208 31-57c or 31-57d of the general statutes, (B) the applicant is on the list  
209 distributed by the Labor Commissioner pursuant to section 31-57a of  
210 the general statutes, (C) the applicant is disqualified or prohibited from  
211 being awarded a contract pursuant to section 31-57b of the general  
212 statutes, (D) the applicant has been disqualified by another state, (E)  
213 the applicant has been disqualified by a federal agency or pursuant to  
214 federal law, (F) the applicant's registration has been suspended or  
215 revoked by the Department of Consumer Protection pursuant to  
216 section 20-341gg of the general statutes, as amended by this act, (G) the  
217 applicant has been disqualified by a municipality, and (H) the matters  
218 that gave rise to any such disqualification, suspension or revocation  
219 have been eliminated or remedied; and

220 (7) Other information as the commissioner deems relevant to the  
221 determination of the applicant's qualifications and responsibilities.

222 (d) The applicant shall include a statement of financial condition  
223 prepared by a certified public accountant which includes information  
224 concerning the applicant's assets and liabilities, plant and equipment,  
225 bank and credit references, bonding company and maximum bonding  
226 capacity, and other information as the commissioner deems relevant to  
227 an evaluation of the applicant's financial capacity and responsibility.

228 (e) Information contained in the application shall be current as of  
229 the time of filing except that the statement of financial condition shall  
230 pertain to the applicant's most recently-completed fiscal year.

231 (f) The commissioner shall determine whether to prequalify an  
232 applicant on the basis of the application and on relevant past  
233 performance according to procedures and criteria set forth in  
234 regulations which the commissioner shall adopt, in accordance with  
235 chapter 54 of the general statutes. Such criteria shall include, at a  
236 minimum, the record of the applicant's performance, including, but



not limited to, written evaluations of the applicant's performance on public or private projects within the past five years, the applicant's past experience on projects of various size and type, the skill, ability and integrity of the applicant and any subcontractors used by the applicant, the experience and qualifications of supervisory personnel employed by the applicant, the maximum amount of work the applicant is capable of undertaking as demonstrated by the applicant's financial condition, bonding capacity, size of past projects and present and anticipated work commitments, and any other relevant criteria that the commissioner prescribes. Such regulations shall also (1) provide that the criteria considered shall be assigned separate designated numerical values and weights and that the applicant shall be assigned an overall numerical rating on the basis of all criteria, and (2) establish prequalification classifications and aggregate work capacity ratings. Such prequalification classifications shall be used to establish the types of work a contractor is qualified to perform and the aggregate work capacity ratings shall be used to establish the maximum amount of work a contractor is capable of undertaking.

(g) (1) The applicant shall indicate the prequalification classifications and aggregate work capacity rating that are sought. The commissioner may issue a certificate of prequalification to any applicant who meets the requirements of this section. Such certificate shall be effective for one year from the date issued and shall indicate the contractor's prequalification classifications and aggregate work capacity ratings.

(2) A prequalified contractor may apply at any time for additional prequalification classifications or aggregate work capacity ratings by submitting the applicable increase in fee, a completed update statement, and other information the commissioner requires.

(3) The commissioner may renew a prequalification certificate upon receipt of a completed update statement, any other material the commissioner requires and a nonrefundable fee in an amount equal to one-half of the application fee for the applicable aggregate work

270 capacity rating as set forth in subsection (b) of this section, except that  
271 in no event shall such fee be less than six hundred dollars.

272 (h) Not later than sixty days after receiving a completed application,  
273 the commissioner shall mail a notice to the applicant concerning the  
274 commissioner's preliminary determination regarding the conditions of  
275 the prequalification certification, a denial of certification, a reduction in  
276 the level of certification sought or nonrenewal of certification. Any  
277 applicant aggrieved by the commissioner's preliminary determination  
278 may request copies of the information upon which the commissioner  
279 relied in making the preliminary determination, provided such request  
280 is made not later than ten days after the date the notice was mailed as  
281 indicated by the postmark on the envelope. Not later than twenty days  
282 after said postmark date the applicant may submit additional  
283 information to the commissioner with a request for reconsideration.  
284 The commissioner shall issue a final determination regarding the  
285 application not later than ninety days after the date the commissioner  
286 mailed the notice of the preliminary determination, which ninety-day  
287 period may be extended for an additional period not to exceed ninety  
288 days if (1) the commissioner gives written notice to the applicant that  
289 the commissioner requires additional time, and (2) such notice is  
290 mailed during the initial ninety-day period.

291 (i) The commissioner may not issue a prequalification certificate to  
292 any contractor (1) who is disqualified pursuant to section 31-57c or 31-  
293 57d of the general statutes, or (2) who has a principal or key personnel  
294 who, within the past five years, has a conviction or has entered a plea  
295 of guilty or nolo contendere for or has admitted to commission of an  
296 act or omission that reasonably could have resulted in disqualification  
297 pursuant to any provision of subdivisions (1) to (3), inclusive, of  
298 subsection (d) of section 31-57c of the general statutes or subdivisions  
299 (1) to (3), inclusive, of subsection (d) of section 31-57d of the general  
300 statutes, as determined by the commissioner.

301 (j) The commissioner may revoke a contractor's prequalification or  
302 reduce the contractor's prequalification classification or aggregate

303 work capacity ratings, after an opportunity for a hearing, if the  
304 commissioner receives additional information that supports such  
305 revocation or reduction.

306 (k) (1) Any materially false statement in the application or any  
307 update statement may, in the discretion of the awarding authority,  
308 result in termination of any contract awarded the applicant by the  
309 awarding authority. The awarding authority shall provide written  
310 notice to the commissioner of such false statement not later than thirty  
311 days after discovering such false statement. The commissioner shall  
312 provide written notice of such false statement to the Commissioner of  
313 Public Works and the Commissioner of Consumer Protection not later  
314 than thirty days after discovering such false statement or receiving  
315 such notice.

316 (2) The commissioner shall revoke the prequalification of any  
317 person, after an opportunity for hearing, if the commissioner finds that  
318 the person has included any materially false statement in such  
319 application or update statement, has been convicted of a crime related  
320 to the procurement or performance of any public or private  
321 construction contract or within the past five years or has otherwise  
322 engaged in fraud in obtaining or maintaining prequalification. Any  
323 person whose prequalification has been revoked pursuant to this  
324 subsection shall be disqualified for a period of two years after which  
325 the person may reapply for prequalification, except that a person  
326 whose prequalification has been revoked on the basis of conviction of a  
327 crime or engaging in fraud shall be disqualified for a period of five  
328 years after which the person may reapply for prequalification. The  
329 commissioner shall not prequalify a person whose prequalification has  
330 been revoked pursuant to this subdivision until the expiration of said  
331 two or five-year disqualification period and the commissioner is  
332 satisfied that the matters that gave rise to the revocation have been  
333 eliminated or remedied.

334 (l) The commissioner shall provide written notice of any revocation,  
335 disqualification, reduction in classification or capacity rating or

336 reinstated prequalification to the Commissioner of Public Works and  
337 the Commissioner of Consumer Protection not later than thirty days  
338 after any final determination.

339 (m) The provisions of this section and section 4 of this act shall not  
340 apply to subcontractors.

341 (n) The commissioner shall establish an update statement for use by  
342 bidders for purposes of renewing or upgrading a prequalification  
343 certificate and for purposes of submitting a bid pursuant to section 4b-  
344 91 of the general statutes, as amended by this act.

345 (o) Any applicant aggrieved by the commissioner's final  
346 determination concerning a preliminary determination, a denial of  
347 certification, a reduction in prequalification classification or aggregate  
348 work capacity rating or a revocation or nonrenewal of certification  
349 may appeal to the Superior Court in accordance with section 4-183 of  
350 the general statutes.

351 Sec. 4. (NEW) (*Effective October 1, 2004*) (a) The Commissioner of  
352 Administrative Services shall adopt regulations, in accordance with  
353 chapter 54 of the general statutes, to establish a standard contractor  
354 evaluation form. Such form shall include, at a minimum, the following  
355 evaluation criteria: (1) Timeliness of performance; (2) quality of  
356 performance; (3) cost containment, including, but not limited to, the  
357 contractor's ability to work within the contract's allotted cost, the  
358 accuracy of the contractor's billing, and the number and cause of  
359 change orders and the manner in which the contractor determined the  
360 price on the change orders; (4) safety; (5) the quality of the contractor's  
361 working relationship with the agency and the quality of the  
362 contractor's supervision of the work area; (6) communication with the  
363 agency; (7) the quality of the contractor's required documentation; (8)  
364 the performance of the contractor's subcontractors, to the extent  
365 known by the official who completes the evaluation; and (9) the  
366 contractor's and any subcontractor's compliance with part III of  
367 chapter 557 of the general statutes, or chapter 558 of the general

368 statutes, or the provisions of the federal Davis-Bacon Act, 40 USC,  
369 Sections 276a to 276a-5, inclusive, as from time to time amended, to the  
370 extent known by the official who completes the evaluation.

371 (b) Each public agency shall complete and submit the evaluation  
372 form to the commissioner after completion of a building project under  
373 the agency's control if the building project is funded, in whole or in  
374 part, by state funds. The commissioner shall include the evaluation in  
375 the contractor's prequalification file. The official shall mail a copy of  
376 the completed evaluation form to the contractor. Any contractor who  
377 wishes to contest any information contained in the evaluation form  
378 may submit a written response to the commissioner not later than  
379 thirty days after the date the form was mailed as indicated by the  
380 postmark on the envelope. Such response shall set forth any additional  
381 information concerning the building project or the oversight of the  
382 contract by the public agency that may be relevant in the evaluation of  
383 the contractor's performance on the project. The commissioner shall  
384 include any such response in the contractor's prequalification file.

385 (c) As used in this section, "public agency" means a public agency,  
386 as defined in section 1-200 of the general statutes, but does not include  
387 The University of Connecticut with respect to any project, as defined in  
388 subdivision (16) of section 10a-109c of the general statutes, that is  
389 undertaken and controlled by the university, and "subcontractor"  
390 means any person who performs any of the four classes of work  
391 specified in subsection (a) of section 4b-93 of the general statutes with  
392 a value in excess of twenty-five thousand dollars.

393 (d) Upon fifty per cent completion of any building project under a  
394 public agency's control, the agency shall advise the contractor in  
395 writing of the agency's preliminary evaluation of the contractor's  
396 performance on the project.

397 Sec. 5. Subsection (m) of section 1-84 of the general statutes is  
398 repealed and the following is substituted in lieu thereof (*Effective*  
399 *October 1, 2004*):

400 (m) No public official or state employee shall knowingly accept,  
401 directly or indirectly, any gift, as defined in subsection (e) of section 1-  
402 79, from any person the official or employee knows or has reason to  
403 know: (1) Is doing business with or seeking to do business with the  
404 department or agency in which the official or employee is employed;  
405 [or] (2) is engaged in activities which are directly regulated by such  
406 department or agency; or (3) is prequalified under section 3 of this act.  
407 No person shall knowingly give, directly or indirectly, any gift or gifts  
408 in violation of this provision.

409 Sec. 6. (NEW) (*Effective January 1, 2004*) (a) Not later than January 1,  
410 2004, and annually thereafter, each awarding authority shall prepare a  
411 report on the status of (1) any ongoing project for the construction,  
412 reconstruction, alteration, remodeling, repair or demolition of any  
413 public building which is estimated to cost more than five hundred  
414 thousand dollars and is paid for, in whole or in part, with state funds,  
415 or (2) any property management contract awarded by the Department  
416 of Public Works which has an annual value of one hundred thousand  
417 dollars or more. The awarding authority shall submit the report to the  
418 Governor and the joint standing committees of the General Assembly  
419 having cognizance of matters relating to government administration  
420 and finance, revenue and bonding. The report shall be submitted in  
421 accordance with section 11-4a of the general statutes. The first report  
422 submitted after a contract is awarded shall indicate: (A) When, where  
423 and how the request for bids was advertised; (B) who bid on the  
424 projects; (C) the provisions of law that governed the award of the  
425 contract and if there were any deviations from standard procedure in  
426 awarding the contract; (D) the names of the individuals who had  
427 decision-making authority in awarding the contract, including, but not  
428 limited to, the individuals who served on any award panel; (E) if an  
429 award panel was used, whether the recommendation of the panel was  
430 followed and, if applicable, the reason why such recommendation was  
431 not followed; (F) whether the awarding authority has any other  
432 contracts with the contractor who was awarded the contract, and if so,  
433 the nature and value of the contract; and (G) any provisions of law that

434 authorized or funded the project.

435 (b) The University of Connecticut shall not be required to submit a  
436 report pursuant to this section for any project, as defined in  
437 subdivision (16) of section 10a-109c of the general statutes, that is  
438 undertaken and controlled by the university.

439 Sec. 7. Section 4b-100 of the general statutes is repealed and the  
440 following is substituted in lieu thereof (*Effective October 1, 2004*):

441 (a) The Commissioner of Public Works shall adopt regulations, in  
442 accordance with chapter 54, to implement the provisions of sections  
443 4b-91 to 4b-100, inclusive, as amended by this act. Such regulations  
444 shall include (1) objective criteria for evaluating the qualifications of  
445 bidders, and (2) the procedures for evaluating bids after the  
446 prequalification status of the bidder has been verified.

447 (b) The Commissioner of Public Works shall adopt regulations, in  
448 accordance with the provisions of chapter 54, establishing a procedure  
449 for promptly hearing and ruling on claims alleging a violation or  
450 violations of sections 4b-91 to 4b-100, inclusive, as amended by this act.  
451 Such claims may be initiated by the Department of Public Works or  
452 any party whose financial interests may be affected by the decision on  
453 such a claim.

454 Sec. 8. (NEW) (*Effective October 1, 2004*) (a) The Department of Public  
455 Works shall establish Construction Services Award Panels which shall  
456 each consist of six members: Three of whom shall be appointed by the  
457 Commissioner of Public Works and shall be current employees of the  
458 Department of Public Works; two of whom shall be appointed by the  
459 department head of the user agency; and one of whom who shall be a  
460 neutral party appointed by the commissioner. The members of each  
461 award panel appointed by the Commissioner of Public Works shall  
462 serve for terms of one year from July first. If any vacancy occurs on the  
463 panel, the Commissioner of Public Works or the head or acting head of  
464 the user agency, as appropriate, shall appoint a person for the  
465 unexpired term in accordance with the provisions of this subsection.

466 (b) A panel established pursuant to this section shall not be deemed  
467 to be a board or commission within the meaning of section 4-9a of the  
468 general statutes. Such panels shall be the award panels for any contract  
469 for the construction, reconstruction, alteration, remodeling, repair or  
470 demolition of any public building for the state pursuant to sections 4b-  
471 91 to 4b-100, inclusive, of the general statutes, as amended by this act,  
472 and section 4b-24 of the general statutes, as amended by this act.

473 (c) For each applicable contract, the commissioner shall designate  
474 one panel to screen all submitted proposals and establish a list of  
475 bidders to be interviewed and shall designate a separate panel  
476 consisting of different members to interview bidders on the list and  
477 submit a list of recommended contractors to the commissioner.

478 (d) The commissioner shall designate one voting member on each  
479 panel to serve as chairperson. The chairperson shall moderate the  
480 committee, collect votes and compile the results.

481 (e) Each award panel shall prepare a memorandum on the selection  
482 process indicating how the evaluation criteria were applied to  
483 determine the most qualified firms, which shall be available to the  
484 public after execution of the contract with the selected contractor. The  
485 commissioner shall select a contractor from among the list of firms  
486 submitted by the award panel that interviewed the contractors. After  
487 the commissioner has made a selection, the names of the contractor  
488 firms submitted to the commissioner shall be available to the public  
489 upon request. The commissioner shall also prepare a memorandum on  
490 the final phase of the selection process, indicating how the  
491 commissioner applied the evaluation criteria to determine the most  
492 qualified firm. Such memorandum shall be available to the public after  
493 execution of the contract with the selected contractor.

494 (f) The commissioner shall adopt regulations, in accordance with  
495 chapter 54 of the general statutes, to implement the provisions of this  
496 section.

497 Sec. 9. Subdivision (4) of section 4b-24 of the general statutes is



498 repealed and the following is substituted in lieu thereof (*Effective*  
499 *October 1, 2004*):

500 (4) The commissioner may designate projects to be accomplished on  
501 a total cost basis for (A) new facilities to provide for the substantial  
502 space needs of a requesting agency, (B) the installation of mechanical  
503 or electrical equipment systems in existing state facilities, or (C) the  
504 demolition of any state facility that the commissioner is authorized to  
505 demolish under the general statutes. If the commissioner designates a  
506 project as a designated total cost basis project, the commissioner may  
507 enter into a single contract with a private developer which may  
508 include such project elements as site acquisition, architectural design  
509 and construction. The commissioner shall select a private developer  
510 from among the developers who are selected and recommended by the  
511 award panels established in section 9 of this act. All contracts for such  
512 designated projects shall be based on competitive proposals received  
513 by the commissioner, who shall give notice of such project, and  
514 specifications for the project, by advertising, at least once, in a  
515 newspaper having a substantial circulation in the area in which such  
516 project is to be located. No contract which includes the construction,  
517 reconstruction, alteration, remodeling, repair or demolition of any  
518 public building for work by the state for which the total cost is  
519 estimated to be more than five hundred thousand dollars may be  
520 awarded to a person who is not prequalified for the work in  
521 accordance with section 3 of this act. The commissioner shall  
522 determine all other requirements and conditions for such proposals  
523 and awards and shall have sole responsibility for all other aspects of  
524 such contracts. Such contracts shall state clearly the responsibilities of  
525 the developer to deliver a completed and acceptable product on a date  
526 certain, the maximum cost of the project and, as a separate item, the  
527 cost of site acquisition, if applicable. No such contract may be entered  
528 into by the commissioner without the prior approval of the State  
529 Properties Review Board and unless funding has been authorized  
530 pursuant to the general statutes or a public or special act.

531 Sec. 10. Subsection (c) of section 4b-52 of the general statutes is

532 repealed and the following is substituted in lieu thereof (*Effective July*  
533 *1, 2004*):

534 (c) Whenever the Commissioner of Public Works declares that an  
535 emergency condition exists at any state facility, other than a building  
536 under the supervision and control of the Joint Committee on  
537 Legislative Management, and that the condition would adversely  
538 affect public safety or the proper conduct of essential state government  
539 operations, or said joint committee declares that such an emergency  
540 exists at a building under its supervision and control, the  
541 commissioner or the joint committee may employ such assistance as  
542 may be required to restore facilities under their control and  
543 management, or the commissioner may so act upon the request of a  
544 state agency, to restore facilities under the control and management of  
545 such agency, without inviting bids as required in subsection (b) of this  
546 section. The commissioner shall take no action requiring the  
547 expenditure of more than five hundred thousand dollars to restore any  
548 facility under this subsection (1) without the written consent of the  
549 Governor, and (2) until the commissioner has certified to the joint  
550 committee of the General Assembly having cognizance of matters  
551 relating to legislative management that the project is of such an  
552 emergency nature that an exception to subsection (b) of this section is  
553 required. Such certification shall include input from all affected  
554 agencies, detail the need for the exception and include any relevant  
555 documentation. The provisions of this subsection shall not apply if any  
556 person is obligated under the terms of an existing contract with the  
557 state to render such assistance. The annual report of the commissioner  
558 shall include a detailed statement of all expenditures made under this  
559 subsection.

560 Sec. 11. Subsections (b) to (e), inclusive, of section 4b-55 of the  
561 general statutes are repealed and the following is substituted in lieu  
562 thereof (*Effective October 1, 2004*):

563 (b) "Consultant" means (1) any architect, professional engineer,  
564 landscape architect, land surveyor, accountant, interior designer,

565 environmental professional or construction administrator, who is  
566 registered or licensed to practice such person's profession in  
567 accordance with the applicable provisions of the general statutes, or (2)  
568 any planner [, construction manager] or financial specialist;

569 (c) "Consultant services" shall include those professional services  
570 rendered by architects, professional engineers, landscape architects,  
571 land surveyors, accountants, interior designers, environmental  
572 professionals, construction administrators, planners [, construction  
573 managers] or financial specialists, as well as incidental services that  
574 members of these professions and those in their employ are authorized  
575 to perform;

576 (d) "University of Connecticut library project" means a project to  
577 renovate and improve the Homer Babbidge Library at The University  
578 of Connecticut;

579 (e) "Firm" means any individual, partnership, corporation, joint  
580 venture, association or other legal entity (1) authorized by law to  
581 practice the profession of architecture, landscape architecture,  
582 engineering, land surveying, accounting, interior design,  
583 environmental or construction administration, or (2) practicing the  
584 profession of planning [, construction management] or financial  
585 specialization.

586 Sec. 12. (NEW) (*Effective October 1, 2004*) With respect to any  
587 contract for the construction, reconstruction, alteration, remodeling,  
588 repair or demolition of any public building under the supervision and  
589 control of the Commissioner of Transportation which contract is  
590 estimated to cost more than five hundred thousand dollars and is not  
591 subject to section 4b-51 of the general statutes, the Commissioner of  
592 Transportation shall award the contract to the lowest responsible and  
593 qualified bidder, as defined in section 4b-92 of the general statutes, as  
594 amended by this act, in accordance with regulations which the  
595 commissioner shall adopt, in accordance with chapter 54 of the general  
596 statutes. Such regulations shall establish, at a minimum: (1) Standards

597 for the advertisement of opportunities to bid, (2) objective criteria for  
598 evaluating the qualifications of bidders, (3) the procedures for  
599 evaluating bids after the prequalification status of a bidder has been  
600 verified, and (4) award panels for the purpose of screening submitted  
601 proposals, interviewing bidders and making recommendations to the  
602 commissioner. Any contract that is subject to section 4b-51 of the  
603 general statutes shall be awarded by the Commissioner of Public  
604 Works in accordance with chapter 60 of the general statutes.

605 Sec. 13. Subdivision (12) of section 13b-4 of the general statutes is  
606 repealed and the following is substituted in lieu thereof (*Effective*  
607 *October 1, 2004*):

608 (12) To provide for the planning and construction of any capital  
609 improvements and the remodeling, alteration, repair or enlargement of  
610 any real asset that may be required for the development and operation  
611 of a safe, efficient system of highway, mass transit, marine and  
612 aviation transportation, provided (A) the acquisition, other than by  
613 condemnation, or the sale or lease, of any property that is used for  
614 such purposes shall be subject to the review and approval of the State  
615 Properties Review Board in accordance with the provisions of  
616 subsection (f) of section 4b-3, and (B) any contract for the planning,  
617 construction, remodeling, alteration, repair or enlargement of any  
618 public building which is estimated to cost more than five hundred  
619 thousand dollars shall be advertised and awarded in accordance with  
620 section 12 of this act.

621 Sec. 14. Section 13b-42 of the general statutes is amended by adding  
622 subsection (h) as follows (*Effective October 1, 2004*):

623 (NEW) (h) Any lease which involves the construction,  
624 reconstruction, alteration, remodeling, repair or demolition of any  
625 public building which is estimated to cost more than five hundred  
626 thousand dollars shall be advertised and awarded in accordance with  
627 section 12 of this act.

628 Sec. 15. Section 20-341gg of the general statutes is repealed and the

629 following is substituted in lieu thereof (*Effective October 1, 2004*):

630 (a) As used in this section, "major contractor" means (1) any person  
631 engaged in the business of construction, structural repair, structural  
632 alteration, dismantling or demolition of a structure or addition that  
633 exceeds the threshold limits provided in section 29-276b, or (2) any  
634 person who, under the direction of a general contractor, performs or  
635 offers to perform any work that impacts upon the structural integrity  
636 of a structure or addition, including repair, alteration, dismantling or  
637 demolition of a structure or addition that exceeds the threshold limits  
638 provided in section 29-276b. Such work includes, but is not limited to,  
639 roofing, masonry and structural frame work.

640 (b) No person shall engage in or offer to perform the work of any  
641 major contractor in this state on any proposed structure or existing  
642 structure or addition that exceeds the threshold limits contained in  
643 section 29-276b unless such person has first obtained a license or  
644 certificate of registration as required under the provisions of chapter  
645 539 or a registration from the Department of Consumer Protection in  
646 accordance with the provisions of this section. Individuals licensed  
647 under chapter 393 shall be exempt from the provisions of this chapter  
648 while engaging in work that they are licensed to perform. The  
649 department shall issue a certificate of registration to any person who is  
650 prequalified pursuant to section 3 of this act who applies for  
651 registration in accordance with this section. Such prequalified person  
652 shall not be required to pay a fee for such registration at any time that  
653 the person maintains valid prequalification. If the individual or the  
654 firm, company, partnership or corporation employing such individual  
655 is engaged in work on a structure or addition that exceeds the  
656 threshold limits contained in section 29-276b and requires licensure  
657 under chapter 393, the firm, company, partnership or corporation shall  
658 be exempt from the provisions of this chapter concerning registration  
659 of major contractors, if the firm, company, partnership or corporation  
660 employs an individual who is licensed as a contractor under chapter  
661 393 to perform such work. The department shall furnish to each  
662 qualified applicant a registration certifying that the holder of such

663 registration is entitled to engage in the work for which the person has  
 664 been issued a registration under this subsection, and the holder of such  
 665 registration shall carry it on his person while engaging in such work.  
 666 Such registration shall be shown to any properly interested person  
 667 upon request. No such registration shall be transferred to or used by  
 668 any person other than the person to whom the registration was issued.  
 669 The department shall maintain rosters of registrants and shall update  
 670 such rosters annually. The department may provide copies of rosters  
 671 to the public for an appropriate fee. The department may suspend or  
 672 revoke any registration issued by the department if the holder of such  
 673 registration is convicted of a felony, is grossly incompetent, is  
 674 disqualified, pursuant to section 3 of this act or whose prequalification  
 675 certificate has been revoked pursuant to section 3 of this act, engages  
 676 in malpractice or unethical conduct or knowingly makes false,  
 677 misleading or deceptive representations regarding his work or violates  
 678 any regulation adopted under subsection (c) of this section. Before any  
 679 registration is suspended or revoked, such holder shall be given notice  
 680 and an opportunity for hearing as provided in regulations adopted  
 681 under subsection (c) of this section. The Commissioner of Consumer  
 682 Protection shall provide written notice of any suspension or revocation  
 683 of a registration to the Commissioner of Administrative Services not  
 684 later than ten days after such suspension or revocation.

685 (c) The Commissioner of Consumer Protection shall adopt  
 686 regulations, in accordance with chapter 54, to implement the  
 687 provisions of this section. Such regulations shall (1) establish the  
 688 registration requirements for major contractors, (2) specify application  
 689 and registration fees, and (3) establish occupational standards for the  
 690 preservation of the public safety.

This act shall take effect as follows:	
Section 1	October 1, 2004
Sec. 2	October 1, 2004

Sec. 3	<i>July 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>
Sec. 5	<i>October 1, 2004</i>
Sec. 6	<i>January 1, 2004</i>
Sec. 7	<i>October 1, 2004</i>
Sec. 8	<i>October 1, 2004</i>
Sec. 9	<i>October 1, 2004</i>
Sec. 10	<i>July 1, 2004</i>
Sec. 11	<i>October 1, 2004</i>
Sec. 12	<i>October 1, 2004</i>
Sec. 13	<i>October 1, 2004</i>
Sec. 14	<i>October 1, 2004</i>
Sec. 15	<i>October 1, 2004</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Type</b>	<b>FY 04 \$</b>	<b>FY 05 \$</b>	<b>FY 06 \$</b>
Admin. Serv., Dept	GF - Revenue Gain	None	775,000	424,000
Admin. Serv., Dept	GF - Cost	143,000	246,000	246,000
Consumer Protection, Dept.	GF - Revenue Loss	None	Up to 250,000	Up to 250,000
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	23,100	99,000	99,000
Transportation, Dept.	TF - None	None	None	None
Ethics Com.; CT State Univ.; Colleges, Regional Comm.- Tech.; Pub. Works, Dept.	GF - None	None	None	None

Note: GF=General Fund; TF=Transportation Fund

### **Municipal Impact:** None

### **Explanation**

The bill requires contractors to pre-qualify to bid on public building construction contracts estimated to cost more than \$500,000. Contractors must submit their pre-qualification application, along with an application fee to the Department of Administrative Services (DAS). If the contractor meets the pre-qualification requirements they are issued a certificate that indicates the type of work the contractor is qualified to perform. The bill requires DAS to establish pre-qualification classification and aggregate work capacity ratings.

The bill establishes a graduated pre-qualification application fee schedule. The application fees range from \$600 to \$2,500, based on the



aggregate work capacity rating sought. According to the Department of Consumer Protection (DCP), there are approximately 1,000 major contractors licensed with the state. The Department of Public Works (DPW) estimates that as many as 500 of these licensed contractors would seek DAS pre-qualification applications. Based on that assumption, the pre-qualification application fee will generate FY 05 revenues of \$775,000. Subsequent years would see declining revenue, as the renewal fee is one-half the application fee (except that no renewal fee will be less than \$600). FY 06 revenues are estimated to be \$424,000.

The bill establishes that any contractor certified as a pre-qualified contractor does not have to pay the \$500 DCP major contractor license fee. It is not known how many licensed major contractors will seek DAS pre-qualification. If all 500 licensed major contractors seek DAS pre-qualification, there would be a General Fund revenue loss of up to \$250,000, beginning in FY 05.

The bill will significantly expand the responsibilities of DAS and will result in a significant workload increase. DAS must examine each applicant's past performance record on public and private projects for the past five years or the 10 most recently completed projects; any legal or administrative proceedings pending against the applicant's principals or key personnel within the past five years; and whether the applicant has been disqualified from bidding on other public contracts. DAS must also analyze each applicant's statement of financial condition (which shows the applicant's assets and liabilities, plant and equipment, bank and credit references, bond company and maximum bonding capacity). To process, analyze, and evaluate the estimated 500 pre-qualification applications, DAS will need 4 new positions. It is estimated that the 4 new positions will be filled for six months in FY 04, at a cost of approximately \$123,000, plus fringe benefits<sup>1</sup>. In FY 05,

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<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The total fringe benefit reimbursement rate as a percentage of payroll is 40.21%, effective July 1, 2002. However, first year fringe benefit costs for new positions do not include pension

the salary costs will be approximately \$246,000, plus fringe benefits. DAS will also incur one-time costs of \$20,000 in FY 04 for equipment and supplies for the new employees.

The bill requires DPW to prepare an annual report on: (1) any ongoing construction project costing more than \$500,000; and (2) any property management contract with an annual value of \$100,000 or more. The reports will be submitted to the Government Administration and Elections (GAE) and Finance, Revenue and Bonding (FRB) Committees (the first report is due 1/1/04). The cost to the agency to meet the reporting requirement will be handled within existing staff and resources.

The bill also requires DPW to (1) determine the pre-qualification classification and aggregate work capacity rating (maximum amount of work a contractor is capable of undertaking) required for a contract and indicate it in advertisements for the contract, and (2) establish two or more Construction Services Award Panels. The agency already performs these functions and will modify existing procedures to implement these changes, which will not result in any additional costs.

DPW will use existing staff and resources to adopt the regulations required by the bill.

The Connecticut State University System and the Regional College Technical System will also be required to meet the requirements of the bill including: (1) determine pre-qualification classification and aggregate work capacity required for each contract; and (2) prepare annual reports on ongoing construction projects and maintenance contracts, which will be submitted to the GAE and FRB Committees. It is expected that both agencies will use existing staff and resources to prepare these reports.

The bill requires the Department of Transportation (DOT) to adopt

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costs lowering the rate to 18.81% in FY 03. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement

regulations regarding contracts for public building construction projects (under their control) estimated to cost more than \$500,000. As these provisions conform statute to current DOT practice, there is no fiscal impact to the agency.

Any workload increase required for the Ethics Commission to implement the provisions of the bill would be handled within existing staff and resources.

House "A" adds a graduated pre-qualification application fee (and renewal fee) schedule, ranging from \$600 to \$2,500. This replaces a \$1,500 application fee. This will increase first year revenues by \$25,000, and second year revenues by \$174,000.

House "A" removes the requirement that DPW prepare semiannual construction project reports for the GAE committee, which eliminates the need for one DPW position and its salary of \$50,000.

House "A" establishes that any contractor certified as a pre-qualified contractor does not have to pay the \$500 DCP major contractor license fee. This may result in a General Fund revenue loss of up to \$250,000, beginning in FY 05.

House "A" requires DOT to adopt regulations regarding certain public building construction projects. This has no fiscal impact.

House "B" adds that DAS may not issue a pre-qualification certificate to any contractor who has a principal or key personnel, who within the past five years, has a conviction or entered a plea of guilty or nolo contendere. House "B" has no fiscal impact.

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**OLR Bill Analysis**

sHB 6417 (File 513, as amended by House "A" and "B")\*

***AN ACT CONCERNING STATE CONSTRUCTION CONTRACTS*****SUMMARY:**

This bill:

1. requires contractors to prequalify to bid on public building construction contracts estimated to cost more than \$500,000;
2. except as otherwise provided in law, redefines "lowest responsible qualified bidder" to include a prequalified contractor;
3. requires advertisements for bids on these contracts to include the financial capacity, prior experience, and workforce required to do the job;
4. requires the Department of Public Works (DPW) commissioner to disqualify contractors who receive advance information about a project;
5. expands the process for starting emergency restoration on state facilities under the DPW commissioner's control;
6. establishes Construction Services Award Panels within DPW;
7. requires state agencies to evaluate contractors after construction is completed and requires the Department of Administrative Services (DAS) commissioner to place the evaluation in the contractor's prequalification file;
8. requires agencies that award building construction contracts to make annual status reports to the governor and the legislature;
9. requires the DPW commissioner to adopt regulations to implement bidding and contracting procedures for building construction,

including the (a) procedures for evaluating bids after a contractor's prequalification status has been verified and (b) objective criteria for evaluating bidder's qualifications;

10. prohibits state officials and employees from accepting gifts from prequalified building contractors;
11. prohibits employees with decision-making authority from communicating with bidders on building construction contracts under certain circumstances;
12. requires the Department of Transportation (DOT) commissioner to award large building construction contracts to the lowest responsible qualified bidder who is prequalified by DAS;
13. requires the Department of Consumer Protection (DCP) to issue any prequalified contractor who applies a certificate of registration as a major contractor and prohibits the department from collecting a registration fee during any period the contractor's prequalification is valid; and
14. changes the requirement for employing construction managers.

\*House Amendment "A" eliminates the DPW commissioner's authority under the original bill to disqualify contractors who lie on their prequalification applications; prohibits all state officials and employees, rather than just those with decision-making authority as provided under the original bill, from accepting gifts from prequalified building contractors; establishes multiple Construction Services Award Panels within DPW instead of just one as required under the original bill; requires agencies that award building construction contracts to make annual, rather than semi-annual, status reports as required under the original bill; and adds the provisions on emergency restoration, DOT contracts, DCP registration certificates; and construction managers.

\*House Amendment "B" limits the contractors who cannot receive a prequalification certificate because of a principal or key employee's criminal history.

EFFECTIVE DATE: October 1, 2004, except for the provisions permitting contractors to prequalify with DAS and emergency

construction, which are effective July 1, 2004, and the provision on status reports, which is effective January 1, 2004.

## **CONSTRUCTION CONTRACTS OVER \$500,000**

### ***Bidders and Awards***

Beginning October 1, 2004, the bill, with one exception, requires contractors to prequalify before they can bid on a contract funded in whole or part by the state for the construction, reconstruction, alteration, remodeling, repair, or demolition (“building construction”) of any state or municipal building estimated to cost more than \$500,000. The requirement does not apply to UCONN 2000.

The authorities authorized by law to award these contracts are the DPW commissioner, the Joint Committee on Legislative Management for work or construction on buildings under its supervision, and public colleges and universities for work or construction on buildings under their supervision or control.

The bill requires the affected awarding authorities to award the contract on the basis of competitive bidding to the lowest responsible qualified bidder who is prequalified. By law, the lowest responsible qualified bidder on the basis of competitive bidding is the person possessing the skill, ability, and integrity necessary for the faithful performance of the work as determined by his past performance, including his experience with projects of the size of the one advertised, and financial ability.

The bill eliminates the requirement for the awarding authority to consider the bidder’s financial ability and instead requires the authority to consider information contained in the bidder’s update statement (see below). It requires awarding authorities to look at a bidder’s past experience with projects of the nature and scope, rather than the size, of the one advertised.

### ***Advertisement***

The bill requires advertisements for bids on these contracts that awarding authorities are required by law to place in newspapers that circulate in the state to indicate the prequalification classification and aggregate work ratings required of successful bidders (i.e., the types of

work the contractor must be able to perform and the maximum amount of work he must be capable of undertaking).

### ***Bids***

Beginning October 1, 2004, the bill requires each bid on the affected large contracts to include a copy of a prequalification statement from the DAS commissioner showing that the bidder has the prequalification classification and aggregate work capacity ratings required under the contract. The bid must also have an update statement in the form the commissioner prescribes. Any bid submitted without these documents is invalid.

At the end of the bidding process, the bill requires the bidder to certify under penalty of false statement that (1) the bid information is true; (2) there were no substantial changes in his financial position or corporate structure since his most recent prequalification certificate was issued or renewed, other than those noted in the update statement; and (3) he made the bid without fraud or collusion with anyone.

## **CONTRACTOR PREQUALIFICATION**

### ***Prequalification Application***

Contractors, but not subcontractors, can seek prequalification to work on any state or municipal construction project by submitting an application to DAS on a form prescribed by the DAS commissioner together with a nonrefundable fee.

The applicant must include information current at the time of filing, except that the statement of financial condition described below must reflect the most recently completed fiscal year. The applicant must sign the application under penalty of false statement.

The application must, at a minimum, require the applicant to disclose:

1. how he is organized;
2. his principals and key personnel and any business names he or his principals or key personnel used during the past five years;
3. his construction experience over the past five years or on the 10

most recently completed projects and the names of any subcontractors used on the projects;

4. any legal or administrative proceedings pending against or concluded adversely to him, or his principals or key personnel in the past five years concerning the procurement or performance of a construction contract;
5. his knowledge of any investigation pending against him or his principals or key personnel;
6. his relationship, whether financial, personal, or familial, with the owner of any construction project he listed as construction experience;
7. whether (a) he has been disqualified from bidding on federal, state, or municipal construction contracts, including those in other states, (b) the Department of Consumer Protection has revoked or suspended his registration, and (c) the matters that gave rise to the disqualification, revocation, or suspension have been remedied or eliminated; and
8. any other information the commissioner deems relevant to determining the applicant's qualifications and responsibility.

The applicant must include in the application a statement of financial condition prepared by an accountant that shows the applicant's assets and liabilities, plant and equipment, bank and credit references, bonding company and maximum bonding capacity, and any other information the commissioner deems relevant to the determination of the applicant's financial capacity and responsibility.

### ***Application Fee***

The amount of the fee depends on the applicant's aggregate work capacity rating. It is a graduated fee starting at \$600 and capped at \$2,500.

<i>Aggregate Work Capacity Rating</i>	<i>Fee</i>
\$5,000,000.00 or less	\$600
\$5,000,000.01 to \$8,000,000.00	\$750
\$8,000,000.01 to \$10,000,000.00	\$850



\$10,000,000.01 to \$15,000,000.00	\$1,000
\$15,000,000.01 to \$20,000,000.00	\$1,500
\$20,000,000.01 to 40,000,000.00	\$2,000
\$40,000,000.01 or more	\$2,500

### ***Prequalification Classification and Aggregate Work Capacity Rating***

Applicants must indicate the prequalification classifications and aggregate work capacity rating they are seeking. Once prequalified, a contractor can apply at any time for additional prequalification classifications or aggregate work capacity ratings by submitting the applicable fee, a complete update statement, and other information the commissioner requires.

The DAS commissioner may issue to any applicant that meets the requirements a certificate of prequalification that includes his classifications and aggregate work capacity ratings (e.g., the types of work the contractor can perform and the maximum amount of work he is capable of undertaking).

The certificate is effective for one year from the date issued and may be renewed upon receipt of a nonrefundable fee of \$600 or one-half of the application fee for the applicable aggregate work capacity rating, whichever is greater; a completed update statement; and any other material the commissioner requires. Awarding authorities must use the classifications to determine the types of work a contractor is qualified to perform and the aggregate work capacity ratings to establish the maximum amount of work he is capable of undertaking.

The commissioner must determine whether to prequalify an applicant based on the application and on relevant past performance in accordance with procedures and criteria that she must adopt in regulations. At a minimum, the criteria must include (1) the applicant's past performance record, including written evaluations on his performance on public or private projects in the past five years; (2) his prior experience on projects of various sizes and types; (3) his supervisory personnel's experience and qualifications; (4) his maximum work capacity as demonstrated by his financial condition, bonding capacity, size, or past projects, and present and anticipated work commitments; (5) the skill, ability, and integrity, of the applicant and any subcontractors he has used; and (6) any other relevant

information the commissioner prescribes.

The regulations must also (1) provide that the criteria be assigned different numerical values and weights and that each applicant be assigned an overall numerical rating based on all criteria and (2) establish prequalification classifications and aggregate work capacity ratings.

### ***False Applications***

The contract awarding authority may terminate a contract with or disqualify any applicant for making a materially false statement on an application or statement update (see below). The awarding authority must give the DAS commissioner written notice of the false statement within 30 days after discovering it. And the DAS commissioner must, in turn, give the DPW and the consumer protection commissioners written notice of it within 30 days after discovery or after receiving notice from the awarding authority.

### ***Decision on Applications and Review Process***

Within 60 days after receiving a complete application, the DAS commissioner must notify applicants by mail of her (1) preliminary determination of the prequalification certification conditions or (2) decision to deny certification, reduce the certification level, or refuse to renew certification.

Any applicant aggrieved by a preliminary determination may, within 10 days after the notice of determination was mailed as indicated by the postmark on the envelope, ask for copies of the information the commissioner relied on to make it. Not later than 20 days after the post-marked date, the applicant can give the commissioner additional information and ask her to reconsider the application.

The commissioner must make a final determination on the application within 90 business days after the date the commissioner mailed her preliminary determination. The initial 90 days may be extended for up to an additional 90 days if the commissioner notifies the applicant, during the initial period, that she needs more time. Any applicant aggrieved by the final determination may appeal to the Superior Court.

**Prequalification Revocation**

The bill requires the commissioner to revoke a contractor's prequalification, after a hearing, if she finds that he (1) included materially false statements in his application or update statement, (2) has been convicted of a crime related to the procurement or performance of any public or private construction contract, or (3) has otherwise engaged in fraud in obtaining or maintaining prequalification within the past five years. The revocation is effective for two years, unless the contractor has been convicted of fraud, in which case it is effective for five years. After this time, the commissioner cannot prequalify the contractor until she is satisfied that the revocation has been eliminated or remedied. She must give the DPW and consumer protection commissioners written notice of the revocation or reinstatement within 30 days after the final decision.

The bill permits her to revoke a contractor's prequalification or reduce his classification or aggregate work capacity ratings, after a hearing, if she receives additional information that supports the revocation or reduction.

**UPDATE STATEMENTS**

The commissioner must establish an update statement for certificate renewals and upgrades and for use by contractors who bid on building construction contracts with an estimated value of over \$500,000. The statement must provide space for information on (1) all of the projects the bidder has completed since his prequalification certificate was issued or renewed; (2) all projects the bidder has under contract at that time, including the percentage incomplete; (3) the names and qualifications of personnel who will supervise the contract; (4) any significant change in the bidder's financial position or corporate structure since the certificate was issued or renewed; and (5) any other relevant information the commissioner prescribes.

**DISQUALIFICATION**

The bill prohibits the DAS commissioner from prequalifying any contractor (1) disqualified for labor law violations or (2) who has a principal or key person who within the past five years has been convicted or has entered a plea of guilty or *nolo contendere* for any act or omission that could result in disqualification as determined by the

commissioner.

The bill requires the DPW commissioner, presumably, to disqualify from bidding on a public building construction project anyone who receives information that is not available to the general public from a public official about the project before an advertisement for bids is published.

### **EMERGENCY AND NON-BID PROJECTS**

By law, the DPW commissioner can select and interview at least three responsible and qualified general contractors and negotiate with any one of them to complete any of eight special building projects: a community court, Connecticut Juvenile Training School, downtown Hartford higher education center, University of Connecticut library, a correctional facility, a juvenile detention center, and a student residential facility for the Connecticut State University system.

He can also declare an emergency condition at most state facilities and restore them at a cost under of \$500,000 or less without inviting bids. If restoration costs would exceed \$500,000, the law requires him to get the governor's written consent before going forward.

In addition to being responsible and qualified, the bill requires non-bid contractors to be prequalified and selected by a construction service award panel (see below). Beginning October 1, 2004, the bill requires any agency seeking to have a project awarded without competitive bidding to certify to the Legislative Management Committee the emergency nature of the project and the need for an exception to competitive bidding. The certification must include input from all affected agencies, detail the need for the exception, and include any relevant documentation.

The bill requires the commissioner to follow the above-described certification process before starting work on emergency projects that currently require the governor's written consent.

### **CONSTRUCTION SERVICES AWARD PANEL**

The bill establishes six-member Construction Services Award Panels within DPW. The commissioner must appoint one neutral member and three other members from among current DPW employees. The

agency requesting the construction must appoint the remaining two members. The commissioner's appointees serve for one year, beginning on July 1. The DPW commissioner or head of the requesting agency, as appropriate, must appoint people to fill vacancies for an unexpired term. The commissioner must designate one voting member on each panel to serve as chairperson. The chairperson serves as committee moderator, collects votes, and compiles results. The bill specifies that the panels are not boards or commissions for the purpose of appointments.

The panels must award state construction contracts, including contracts awarded on a total cost basis and contracts for the eight special building projects authorized by law.

### **Process**

For each applicable contract, the commissioner must designate one panel to screen all proposals and establish a list of bidders to be interviewed and a separate panel to interview them and submit a list of recommended contractors to the commissioner. The commissioner must select a contractor from the list of recommended contractors to complete construction projects, including projects where he enters an agreement with a single developer to complete all phases of the contract (total cost basis). After the commissioner makes the selection, the names of the contractors submitted to him must be available to the public upon request.

Each panel and the commissioner must prepare a memorandum on the selection process and the final phase of the selection process, respectively, indicating how the evaluation criteria were used to determine the most qualified firms. The memoranda must be made publicly available after a contract has been entered with the selected contractor.

The bill requires the commissioner to adopt implementing regulations.

### **CONTRACTOR EVALUATIONS**

The DAS commissioner must adopt regulations to establish a standard contractor evaluation form. At a minimum, the form must include the following evaluation criteria:

1. timeliness and quality of performance;
2. cost containment;
3. safety;
4. quality of the contractor's (a) working relationship with the agency, (b) supervision of the work area, and (c) required documentation;
5. communication with the agency;
6. performance of the contractor's subcontractors to the extent known; and
7. the contractor's and any subcontractor's compliance with state preference, prevailing wage, minimum wage, and other related laws or the federal prevailing wage law (Davis-Bacon Act), as from time to time amended to the extent known.

Each public agency, other than UCONN, must complete and submit an evaluation form on each contractor, but not subcontractor, at the conclusion of state-funded work funded on a building under the agency's control. The commissioner must include the evaluation in the contractor's prequalification file. The person certifying the evaluation must mail it to the contractor.

When 50% of the work on the construction project is completed, the agency must give the contractor a written copy of the preliminary evaluation.

A contractor may contest any information in the evaluation by submitting a written response to the DAS commissioner no later than 30 days after the date the evaluation was postmarked. The response must indicate anything that may be relevant to the contractor's performance on the contract. The commissioner must include the response in the contractor's prequalification file.

## **STATUS REPORTS**

By January 1, 2004, and annually thereafter, the bill requires each awarding authority, other than UCONN with respect to projects under its control, to prepare a report on the status of any (1) ongoing

building construction contracts estimated to cost more than \$500,000 that will be paid, in whole or in part, with state funds or (2) DPW-awarded property management contract with an annual value of \$100,000 or more. They must submit the reports to the governor and the Government Administration and Elections and Finance, Revenue and Bonding committees.

The bill requires the first report submitted after a contract is awarded to indicate:

1. when, where, and how bids were advertised;
2. the bidders;
3. the law governing the contract award and if there was any deviation from standard contract awarding procedures;
4. the people responsible for awarding the contract, including the names of people on any awarding panel;
5. whether an awarding panel was used and its recommendation followed;
6. why any panel recommendations were not followed;
7. the existence and nature of any other contract the authority has with the contractor that is the subject of the report; and
8. the text of any laws authorizing or funding the project.

## **ETHICS**

### ***Gifts to Decision-Makers on Contract Awards***

The bill prohibits public officials and state employees from knowingly accepting, either directly or indirectly, a gift from any person they know or have reason to know is a prequalified contractor. It also prohibits these contractors from giving them gifts. Public officials and state employees are already prohibited from accepting gifts from people doing business with or seeking to do business with their agencies. The people seeking to do business with the state are also prohibited from giving public officials and state employees gifts. The

State Ethics Commission can fine violators up to \$2,000 per violation or issue a cease and desist order.

### ***Prohibited Communications***

The bill prohibits certain employees of the awarding authorities from communicating with a bidder on a building contract prior to the contract award, if the communication results in the bidder receiving information about the contract that is not available to other bidders. The prohibition applies to employees with decision-making authority concerning the contract. The prohibition does not apply to negotiations with the lowest responsible qualified bidder when his price exceeds the amount of funds allocated for construction.

### **DOT CONTRACTS**

The bill requires the DOT commissioner to advertise and award building construction contracts under his supervision and control and valued at over \$500,000 to the lowest responsible and qualified bidder who has been prequalified by the DAS commissioner. The same requirements apply to construction associated with leases at airports under the commissioner's jurisdiction. The commissioner must adopt regulations that, at a minimum, establish:

1. bid advertisement standards;
2. objective criteria for evaluating bidders' qualifications;
3. evaluation procedures after bidders' qualifications are verified;  
and
4. panels to screen, interview, and make recommendations on bidders.

### **REGISTRATION AS MAJOR CONTRACTORS**

The bill requires DCP to issue any prequalified contractor who applies a certificate of registration as a major contractor and prohibits the department from collecting a registration fee during any period the contractor's prequalification is valid. The bill authorizes the department to revoke the registration of any contractor (1) who cannot



receive a prequalification certificate because of disqualification or (2) whose prequalification certificate is revoked.

The commissioner must give the DAS commissioner written notice within 10 days after any registration suspension or revocation.

## **CONSTRUCTION MANAGERS**

The bill eliminates a requirement for (1) agencies to issue request for proposals through newspaper advertisements for construction managers and (2) the construction services selection panel to recommend to the awarding authority the respondent most qualified to do the job. It is unclear, under the bill, whether an agency seeking to hire a construction manager would have to enter a personal service agreement or follow the process the bill establishes for hiring a construction contractor.

## **BACKGROUND**

### ***Bid Disqualifications Under Current Law***

A contractor can be disqualified from bidding on, applying for, or participating as a subcontractor under state contracts for certain specific causes. These include:

1. conviction of, entry of a guilty or nolo contendere plea, or admission to a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of one;
2. conviction of, entry of a guilty or nolo contendere plea, or admission to a violation of any state or federal law for (a) embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or honesty that affects responsibility as a state contractor or (b) antitrust, collusion, or conspiracy offenses arising from submission of bids or proposals for any public or private contract or subcontract;
3. willful failure to perform according to terms, a history of performance failure, or unsatisfactory performance; or

4. willful violation of statutory or regulatory requirements applicable to a public contract, agreement, or transaction.

The existence of a cause for disqualification cannot be the only factor the commissioners consider. They must also consider the seriousness of the contractor's acts or omission and any mitigating factors when deciding whether to disqualify him.

### ***Legislative History***

On May 6, 14, 19, and 21, the House referred the bill (File 513) to the Judiciary, Finance, Revenue and Bonding, Appropriations, and Labor and Public Employees committees, respectively. They reported the bill unchanged on May 13, 15, 20, and 22, respectively.

### **COMMITTEE ACTION**

#### Government Administration and Elections Committee

Joint Favorable Substitute

Yea 19      Nay 0

#### Judiciary Committee

Joint Favorable Report

Yea 24      Nay 10

#### Finance, Revenue and Bonding Committee

Joint Favorable Report

Yea 31      Nay 9

#### Appropriations Committee

Joint Favorable Report

Yea 46      Nay 0

#### Labor and Public Employee Committee

Joint Favorable Report

Yea 11      Nay 1

